IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

MISCELLANEOUS CIVIL APPLICATION NO.106 OF 2007

Neha Vishal Dua ..Applicant.
v.
Hector Paul Francis ..Respondent.

Ms.Seema Sarnaik, adv. for the Applicant.

Ms.Suvarna Telgote, adv. for the Respondent.

CORAM: J.H.BHATIA,J.
DATE: 4th December,2007.

P.C.

1. Heard the learned counsel for the Parties.

2. Applicant herein was married to the respondent on 16.10.2000 and out of the said wedlock, they have one son namely, Brian. After divorce between the applicant and the respondent, the applicant/wife entered into second marriage and she was not in position to maintain her son. Therefore, permanent custody of the son was given to the respondent/husband. As per the said order, the applicant/mother was given access to the child. During the summer vacation from March, 2007, the child was given in the custody of mother for vacation. However, after the vacation, the applicant did not return the child to his father but retained the custody with herself and moved an application for permanent custody. That application is still pending. Pending

that application, in view of the fact that child is in actual custody of mother, father/respodent moved an application for access to the child. In that application number of opportunities were given to the applicant/mother to file reply. As she did not file reply, on 7-7-2007, the learned Judge Ms.A.G.Farswani directed the applicant to hand over minor son to the respondent on 1st , 3rd and 5th week end to the respondent/father for overnight access. Accordingly, she has to handover the son at 11.00 a.m. before the Marriage Counsellor on 1st, 3rd and 5th Saturday and the respondent is directed to hand over the son to the applicant on following Sunday at 9.00 p.m. at the gate of the applicant's residence.

3. The applicant has filed this application for transfer of marriage petition from the Court of Ms.A.G.Farswani only because she did not grant adjournments and the dates as requested by the applicant. It appears that having taken some dates to file reply to the application of the respondent, on 2-7-2007, the applicant moved an application for adjournment to 15th July, 2007 on the ground that her advocate Deepa Mavin Kurve was out of station for 15 days for urgent personal reasons. That application was opposed. The learned Judge rejected that application observing that neither the applicant had obtained any permission to engage the advocate nor the said advocate

had filed vakalatnama and, therefore, because of the personal reasons of that advocate, matter could not be adjourned for a long time. Having rejected that application, the learned Judge adjourned the matter to 4-7-2007. On that day again on the same ground, applicant sought adjournment for eight days. That application was also rejected and the matter was adjourned to 6-7-2007 for filing a reply. On 6-7-2007 the applicant made one more application for adjournment for 8-10 days on the same ground. This was also rejected. On 7-7-2007, order came to be passed below Exhibit 15 filed by the respondent/father for access to the child on 1st, 3rd and 5th Saturday evening. Application is filed to transfer the matter from the Court of Ms.A.G.Farswani on the ground that the learned Judge appears to be biased against the said advocate and therefore, the applicant may not get justice.

4. After hearing the learned counsel for the parties, I find no substance in the present application. The learned Judge Ms.A.G.Farswani had given ample opportunities and number of adjournments to the applicant to file the reply on Exhibit 15. It is material to note that the Court had granted permanent custody of the child to the respondent as per the order dated 17-11-2006 and in view of that order, which is binding on both the parties, custody of child should have been with the respondent/father. Taking benefit of

that order for access, the child was given to her only for summer vacation. The applicant not only detained the custody of the child but also filed an application for modification of that order and when the father made an application for access to the child for a few days in a month, the applicant was repeatedly taking adjournments on the ground that her advocate is not available. Neither she had taken permission from the Court to engage her advocate nor that advocate had filed vakalatnama. If the learned Judge would have been biased against the applicant, she could have given direction to hand over the custody of the child to the father in view of the earlier order dated 17th November, 2006. Infact the applicant could not keep the custody of the child in violation of the order as long as that order is in force. Taking into consideration the circumstances, I find that the application for transfer from the Court of Ms.A.G.Farswani is an attempt to pressurise the judge to give dates and pass the order as desired by the applicant. Such type of tendency has to be condemned and curbed. By filing this transfer application unnecessarily the applicant has compelled the respondent to appear before this Court, to engage an advocate and to spend money on unnecessary litigation. Therefore, in my opinion, application is liable to be rejected with cost.

5. Application stands rejected. Applicant shall pay cost of Rs.1,000/- to the respondent. Cost to be deposited within two weeks before the trial Court from this day.

(J.H.BHATIA,J.)